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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 150

THE UNITED STATES, PETITIONER,

vs.

STONE & DOWNER CO. AND LOWE DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

BRIEF FOR RESPONDENTS.

EDWARD P. SHARRETTS,
For the Respondents.

INDEX.

	Page.
References to Official Reports of Opinions in Court Below....	1
Statement	2
The issue presented.....	3
Argument:	
1. The wool at bar is not wool commonly known as clothing wool. On the contrary it is combing wool, a separate and distinct class of wool.....	6
2. Congress in prior tariff acts has recognized the classification of wool into clothing wool, combing wool and carpet wool.....	15
3. In reaching its conclusions, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right.....	20
4. The statute in clear, unambiguous terms limits the duty to "clothing wool." Its terms cannot be enlarged by construction so as to include the wool at bar which belongs to a separate and contrasted class of wool known as combing wool.....	28
5. The doctrine of res judicata has a clear application to the case at bar.....	37

Authorities Cited.

Cases:

American Net & Twine Co. v. Worthington, 141 U. S., 468..	24, 36
Bates Refrigerating Co. v. Sulzberger, [illegible] U. S., 1.....	35
Benziger v. United States, 192 U. S., 38.....	36, 37
Chung Fook v. White, 264 U. S., 443.....	33
Cooper v. Dobson, 157 U. S., 148.....	25
Duplex Printing Press Co. v. Deering, 254 U. S., 443.....	30
Eidman v. Martinez, 184 U. S., 578.....	35, 36
Elliott v. Swartwout, 35 U. S., (10 Pet.), 137.....	23
Gould v. Gould, 245 U. S., 151.....	35
Hartranft v. Weigman, 121 U. S., 609.....	37
Hedden v. Richards, 149 U. S., 346.....	24
Lincoln v. United States, 202 U. S., 484.....	31
McKenzie v. Hare, 239 U. S., 299.....	32
Merck v. United States, 6 Ct. Cust. Appls., 32.....	22
Partington v. Attorney General, L. R., 4 H. L., 100.....	36
Pennington v. Coxe, 2 Cranch, 33.....	34

Coat&Sheepskin Co.v.U.S., 206 US.194,203 - P. 24

Page

Pennsylvania R. R. Co. v. International Coal Mining Co., 230 U. S., 184 30
Stone & Downer v. United States (suit 2245), 12 Ct. Cust. Appls., 62 2
Swan v. Arthur, 103 U. S., 597 22
Tiffany v. United States, 131 Fed., 208 21
Two Hundred Chests of Tea, 9 Wheat., 438 23
United States v. Buffalo Natural Gas Fuel Co., 78 Fed., 110; 172 U. S., 339 ..... 21, 22
United States v. Citroen, 223 U. S., 407 31
United States v. Davies, 11 Ct. Cust. Appls., 392 ..... 24, 28
United States v. First National Bank, 234 U. S., 245 31
United States v. Hopewell, 51 Fed., 798 26
United States v. Merriam, 263 U. S., 179 36
United States v. Stone & Downer, 12 Ct. Cust. Appls., 357 .. 1

Statutes:
Emergency Tariff Act of May 27, 1921, C. 14; 42 Stat., 9:
Par. 16 28
Par. 18 4
Par. 19 4
Immigration Act of February 5, 1917, C. 29; 39 Stat., 891 .. 33
Tariff Act of 1867, C. 197; 14 Stat., 559 15
Tariff Act of 1883, C. 121; 22 Stat., 488, 508 ..... 16, 25
Tariff Act of 1909, 36 Stat., 11 18
Par. 361 18
Par. 362 18
Tariff Act of October 3, 1913, C. 16; 38 Stat., 114:
Par. 407 28
Par. 650 3

Miscellaneous: Vol.60 part 2 page 2378,
Congressional Record of Feb. 1, 1921, [illegible] 19
Encyclopedias and Dictionaries:
Appleton's New Practical Encyclopaedia 12
Encyclopaedia Americana 6, 12, 16
Encyclopaedia Brittanica 16
Knight's Cyclopaedia of Industry 12
Nelson's Perpetual Loose-leaf Encyclopaedia 12
New International Encyclopaedia 12
Standard Dictionary 12
Webster's New International Dictionary 12
Tariff Commission Publication, "The Wood Growing Industry" (1921), pp. 215, 217 9
Treasury Department decision 25316 (47 Treas. Dec. 840) .. 25
Treasury Department decision 40217 (45 Treas. Dec. 670) . 23

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References to the Official Report of the Opinions Delivered in the Courts Below.

The opinion of the United States Court of Customs Appeals in the present suit is reported in United States *vs.* Stone & Downer Co., 12 Ct. Cust. Appls., 557, and is printed in the present record (R., 402).

The concurring opinions by the Board of United States General Appraisers, affirmed by the Court of Customs Appeals, are reported in T. D. 40368-46 T. D. 142 (R., 397).

The opinion of the United States Court of Customs Appeals in a prior suit between the present parties involving the same issue is reported in Stone & Downer *vs.* United States (12 Ct. Cust. Appls., 62), and is printed in the present record (R., 409).

Statement.

The United States Court of Customs Appeals has twice decided the question presented in this issue in favor of the present respondents. Both judgments represent the unanimous decision of the five judges of that court. The first case was decided in Stone & Downer *vs.* The United States (suit 2245) on November 17, 1923. No attempt was made to obtain a review of the judgment in that case.

The second decision on a later protest covering exactly similar shipments of wool, yarn, and cloth is the one now before this Court on certiorari. The record, including the judgment and opinion in the earlier case, is part of the present record. A motion was made by respondents on October 18th, 1926, to dismiss the present writ, on the ground that the earlier judgment of the Court of Customs Appeals, never having been reversed nor modified, was *res judicata* and conclusive upon the petitioners as to the questions presented here. Further consideration of that motion was continued until the case should be reached on the merits.

In its second opinion the Court of Customs Appeals followed the earlier decision. Most of the considerations upon which the court below based its conclusions are set forth more fully in its earlier opinion which is printed in the present record (R., 409).

The imported merchandise, the customs classification of which is in dispute, consists of certain long wools known as combing wools, represented by Exhibits 1 to 12, and certain worsted yarn and worsted fabrics, represented by Exhibits 14 and 15. The exhibits used in the present suit are the same ones used in the prior suit (R., 20).

The wool was assessed for duty under paragraph 18 of the Emergency Tariff Act of 1921 (C. 14, 42 Stat. 9, 10). It is claimed by the respondent and held by the courts below to be free of duty under paragraph 650 of the Tariff Act of 1913 (C. 16, 38 Stat. 114, 164). The yarn and cloth were assessed with emergency duties provided in paragraph 19 of the said Emergency Act (42 Stat. 10). The courts below held that the said yarn and fabrics were not subject to the emergency duties provided in said paragraph 19.

The issue presented may be narrowed to the single question: Is the wool at bar "wool commonly known as clothing wool?"

Paragraph 650 of the Tariff Act of 1913 (C. 16, 38 Stat., 114, 164) extended free entry to all classes of sheep's wool in the general provision "wool of the sheep."

The Emergency Tariff Act of 1921 did not repeal the Tariff Act of 1913, nor was it intended to be a general revision of the tariff. It simply selected certain classes of goods and applied to them the emergency duties, leaving all commodities not so named subject to the provisions of the 1913 Act.

Paragraph 18 of the Emergency Act (C. 14, 42 Stat., 9, 10) directed an assessment of duty on one class of sheep's wool, namely, "wool commonly known as clothing wool," leaving all other classes free under paragraph 650 of the Act of 1913.

Paragraph 19 of the Emergency Act (42 Stat., 10) directs an assessment of emergency duties in addition to those specified by the Act of 1913 on manufactures of the wool named in paragraph 18, that is to say, manufactures of wool commonly known as clothing wool.

The Court below held in the prior suit and in the present suit that the wool, yarn and fabrics at bar is combing wool and manufactures of combing wool; that "clothing wool" does not embrace "combing wool," and therefore the said merchandise is not subject to the emergency duties provided in paragraphs 18 and 19.

Petitioner does not deny that the wool at bar is combing wool and concedes that commercially there is a distinction between "clothing wool" and "combing wool" (brief, p. 22), but argues that both classes are in fact "clothing wool" because used in the manufacture of clothing and asks for a construction of the law to that effect.

Respondent concedes that combing wool is made into yarn and fabrics used in the manufacture of wearing apparel but contends that that use does not determine the names under which the different classes of wool are known; but on the contrary, as pointed out by the court below, wherever wool has been the subject of recorded discussion, not only in trade and commerce, but in dictionaries, encyclopædias, publications of the Departments of the Government, including the Tariff Commission, and in prior tariff act, the term "clothing wool" and "combing wool" have been defined and used to designate separate and distinct classes of wool.

The questions here, therefore, are whether the raw wool at bar, as represented by Exhibits 1 to 12, is wool commonly known as clothing wool, and whether the yarn and fabrics, as represented by Exhibits 14 and 15 are manufactures of such wool.

It is conceded by both sides that the yarn and fabrics are made from wools such as Exhibits 1 to 12. Therefore, the issue may be narrowed to the single question: Is the wool at bar "wool, commonly known as clothing wool?"

ARGUMENT.

I.

The wool at bar is not wool commonly known as clothing wool. On the contrary, it is combing wool, a separate and distinct class of wool.

In 1915 the United States Department of Agriculture published a work prepared by F. R. Marshall and L. D. Heller, of the Animal Husbandry Division, entitled "The Wool Grower and the Wool Trade, Bulletin No. 206," which is a recognized authority and which has been quoted from to some extent in the opinions below. (It will be noted that this work is referred to as an authority on wool in the Encyclopaedia Americana under the title "Wool," vol. 29, p. 506, 1920 edition.) This authority furnishes us with very clear information as to the classification of wool and the grading of wool. We quote the following extracts from this work under the heading "Classes of Wool," pages 5 and 6.

> "The value of wool is influenced more or less by its length and it is classified accordingly. The longer wools are known as 'combing' and the shorter ones as 'clothing.' "
>
> * * * * * * *
>
> "The combing wools are used in worsted manufacturing. Only the longer straightened fibers are used and these are placed parallel in the yarn."
>
> * * * * * * *

"Clothing wools are used in the manufacture of woolens, felts, etc. The fibers are laid in every direction and instead of attempting to arrange them parallel as in worsteds, the opposite extreme is desired.

* * * * * * *

"The difference in value between combing and clothing wools is from two to six cents per scoured pound, in favor of the former."

* * * * * * *

"Coarse, low wools more or less resembling hair are classed as carpet wools."

After the wool is classed as above indicated, the fleeces classed as "combing wool" and the fleeces classed as "clothing wool" are graded according to quality. Quality is determined by the fineness of the fiber; that is to say, its diameter.

In the United States the different qualities are indicated by such terms as "fine," "half-blood," "three-eighths-blood," "quarter-blood," and "braid."

The said bulletin at page 15 has the following to say with respect to these grade names:

"Half-blood, three-eighths-blood, and quarter-blood grades, as the terms were coined, referred supposedly to wools from sheep of half, three-eighths, and quarter Merino blood, but they have no such significance now. Wools grading as high as half-blood can come from sheep having no trace of Merino blood; the purebred Southdown, for instance, produces

wool that sometimes grades that high, and this breed has been kept pure from outside blood for centuries. On the other hand, quarter-blood would rarely come from a sheep containing any Merino blood. Low quarter blood is a grade lower than quarter blood, and braid is the lowest grade of all. It usually refers to luster wool, such as might come from a Lincoln or a Cotswold sheep."

At page 18 of the said Bulletin 206 appears the following table which shows the way the wool is classified and graded:

Classification and Grades of Territory Wools.

COMBING.

Fine staple Fine medium staple	usually one grade.
Half-blood staple.	
Three-eighths-blood staple.	
Quarter-blood staple.	
Low-quarter-blood staple Coarse, common, low, or braid	often one grade.

CLOTHING.

Fine clothing Fine medium clothing	usually one grade.
Half-blood clothing.	
Three-eighths-blood clothing.	
Quarter-blood clothing, or short quarter-blood.	

Practically all three-eighths-blood and quarter-blood wools are of combing length.

The term "staple" as applied to a territory wool refers to a combing wool. "Ordinary" is sometimes used to designate clothing wool in this section instead of referring to quality. The terms of fine, fine medium, medium, and low medium have arisen and are used in a general way in referring to territory wools. They are often used in referring to original lots and are largely equivalent to the following:

Fine ==XX and X qualities, or fine staple and fine clothing.
Fine medium==X, half-blood and three-eighths-blood.
Medium ==Three-eighths-blood and quarter-blood.
Low medium==Low quarter-blood and braid."

The United States Tariff Commission in its report to Congress in 1921 on "The Wool-Growing Industry" at page 215 of the report says:

> "Wools are graded in the trade chiefly according to diameter and length of fiber. On the basis of diameter (quality or fineness) the grades used for range-grown ('Territory') clips are fine, fine medium, half-blood, three-eighths-blood, quarter-blood, low quarter-blood, common, and braid. Wool grown east of about the one-hundredth meridian—*i. e.*, farm or 'fleece' wools—is graded usually as 'XX,' 'X,' half-blood, and as above for lower qualities. 'XX' and 'X' fiber of superior length is known as fine Delaine and Delaine.
>
> "On the basis of length the division is into 'combing' and 'clothing.' Combing wool is used in the Bradford (English) system of worsted

> manufacture, in which nearly all the shorter lengths are combed out as 'noil,' while the fibers are laid parallel in making the 'tops,' which is the first stage in the manufacturing process after scouring. Strictly clothing wools are adapted only to carding, by which process the fiber is laid in every direction, interlocked or felted, and are manufactured into 'woolen' goods. Noil, which is the by-product of combing and mill waste in general, is used with clothing wools in making some woolens."

At page 217 of the report the Tariff Commission calls to the attention of Congress the fact that the United States Department of Agriculture, in its endeavor to promote uniformity in grading wool, had established tentative minimum lines between grades as follows:

"TABLE XXXI.—*Bases for Tentative Length Divisions in Wool Grades.*

[U. S. Department of Agriculture, Bureau of Markets.]

Grade.	Clothing.	French or baby clothing.	Strictly combing.
Fine	Under $1\frac{1}{4}$ inches	From $1\frac{1}{4}$ to 2 inches	Over 2 inches.
One-half-blood	Under $1\frac{1}{4}$ inches	From $1\frac{1}{4}$ to $2\frac{1}{4}$ inches	Over $2\frac{1}{4}$ inches.
Three-eighths-blood	Under $1\frac{1}{2}$ inches	From $1\frac{1}{2}$ to $2\frac{1}{2}$ inches	Over $2\frac{1}{2}$ inches.
One-quarter-blood	Under $1\frac{1}{2}$ inches	From $1\frac{1}{2}$ to $2\frac{3}{4}$ inches	Over $2\frac{3}{4}$ inches.
Low one-quarter-blood	Under 2 inches	From 2 to 3 inches	Over 3 inches.

"Common and braid wools are so rarely shorter than 3 inches, and are so rarely sufficiently weakened by the various things that cause 'tender' wool, that there is no necessity for suggesting a 'baby combing' class for them."

Precisely the same definitions for the terms "clothing wool" and "combing wool" as indicated in the above authorities are found in the books of ordinary reference. Webster's New International Dictionary defines the terms "clothing wool" and "combing wool" as follows:

"Clothing wool—a fine, close, short staple wool."

"Combing wool—a wool adapted for being combed."

Standard:—

"Clothing wool—a compact, fine short fibered wool suitable for felting."

In addition to the foregoing the following authorities, extracts from which are given in the opinion in suit 2245 (R., 410-415), make the same distinction between the terms "clothing wool" and "combing wool":

Encyclopædia Americana, vol. 29, pp. 501, 502.

Nelson's Perpetual Loose-Leaf Encyclopædia, vol. XII, tit. Wool, p. 634.

New International Encyclopedia, tit. Wool, vol. 20, pp. 642, 643.

Appleton's New Practical Cyclopædia, vol. 6, p. 431.

Knight's Cyclopædia of Industry, tit. Woolen and Worsted Manufactures, p. 1795.

The record in suit 2245, which is part of the present record, contains the testimony of men of wide experience in the wool industry, most of whom were called by the Government. As stated by Judge Bland speaking for the Court of Customs Appeals in the opinion in suit 2245 (R., 410):

> "It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms 'clothing wool' and 'combing wool'. With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system."

Petitioner has not challenged the correctness of that finding.

The testimony is practically unanimous that "clothing wools" are the short wools used in the woolen system; combing wools are the long wools used in the worsted system; the wool at bar, Exhibits 1 to 12, are combing wools. (R., 31, 51, 52, 60, 75, 78, 81, 82, 84, 85, 89, 124, 125, 126, 154, 168, 174, 190, 191, 199, 200, 269, 279, 292, 304.) The coarse wools known as carpet wools are divided according to length into clothing carpet wools and combing carpet wools (R., 123, 271).

When the present suit was tried six additional witnesses, five of whom were called by the Government,

in the woolen system of manufacturing

testified as to the use of the terms "clothing wool" and "combing wool" in the wool growing sections of the country. These witnesses were for the most part officers in wool growers associations. As to this testimony Judge Bland, speaking for the court below, says in the opinion (R., 402):

> "The new evidence throws no new light on the case, except that a reading of it confirms us in the opinion that wherever and whenever clothing wool is spoken of by anyone knowing the meaning of the term it means a short-stapled wool used in the carding process as distinguished from combing wool, which is used in the combing or worsted process."

From the foregoing it is clear that the short staple wool is commonly and generally known as "clothing wool" to anyone and everyone knowing anything about wool as an article of commerce. It is equally obvious that combing wool is not commonly known as clothing wool.

Congress, with full knowledge of the commonly and generally accepted classification, has in clear unambiguous language limited the duty to "wool, commonly known as clothing wool."

The wool at bar is combing wool. It is, therefore, outside the taxing provision.

II.

Congress in prior tariff acts has recognized the classification of wool into clothing wool, combing wool and carpet wool.

The Tariff Act of 1867 (c. 197, 14 Stat., 559) contained the following provisions:

Class 1—Clothing Wool.

That is to say, merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the U. S. from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

Class 2—Combing Wools.

That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the alpaca, goat, and other like animals.

Class 3—Carpet Wools, and Other Similar Wools.

Such as Donskoi, native South American, Cordova, Valparaiso, native Smyrna, and including all such wools of like character as have

> been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria and elsewhere.

The same classification is contained in the Tariff Act of 1883 (c. 121, 22 Stat., 488, 508).

Petitioner, at page 23 of his brief, has printed in full only the first of the above classifications, namely, "Class I. Clothing Wool." They are printed above as they appear in the statute.

Petitioner does not deny that the wools at bar are combing wools, but insists that they would have been classed as Class I, Clothing Wools, under the Act of 1867, because they are of merino blood and come from Australia, New Zealand and South America.

Petitioner's argument, however, does not take into account radical changes that have taken place in the breeding of sheep since the acts in question were passed. In 1867, no doubt, most of the "clothing wool" came from pure merino sheep and the Down short wool breeds which produce the shortest wool, while the combing wools came from the pure English long wool breeds such as the Leicester, Cotswold, Lincolnshire and Down long wool sheep.

The Tariff Acts of 1867 and 1883 grouped wools accordingly. The Encyclopædia Brittanica under the title "Wool" tells us that up until 1885 Australia confined itself to the production of Merino wool. The development of the frozen meat trade between 1880 and 1890 changed conditions and there was a tendency to breed larger sheep with a valuable carcass and

mediocre wool. New Zealand was especially adapted for this development. "In this manner," says the Encyclopædia, "it came about that cross-bred wool supplanted Merino wool to a very considerable extent throughout Australasia. This change would have been serious for the wool comber and spinner had not the Bradford combers, spinners, and manufacturers put their shoulder to the wheel and developed a world-wide renown for their cross-bred tops, yarns, and fabrics." This same authority tells us that sheep breeding developed into a real science and remarkable results were obtained with such crosses as Merino-Lincoln, Merino-Leicester, and Merino-Shropshire.

It will thus be seen that by breeding and selection wools showing merino blood were produced of sufficient length to be classed as combing wool. These wools were no doubt shorter than the wool from the pure English breeds but combing machinery was improved so as to manipulate them.

Congress recognized that after 1885 it was incorrect to group all wools of Merino blood under the heading "Clothing Wool," and in all acts subsequent to the Act of 1883 the headings were omitted.

This does not mean, however, that the distinction between clothing wool and combing wool ceased to exist. On the contrary, the present record shows conclusively that it is just as important today as it ever was, and that the fundamental distinctions between the two classes of wool is the same, that is, clothing wools are the short wools, that go to the woolen in-

dustry, and combing wools are the long wools, that go to the worsted industry.

The testimony of Petitioner's own witnesses shows that one of the purposes of the various wool growers associations is to educate the farmers as to the correct method of classifying their wool into "clothing wool" and "combing wool" (R., 36).

Congress itself as late as the Tariff act of 1909 uses the terms "clothing wool" and "combing wool" to distinguish between the Down short wools and the Down long wools. (38 Stat., 11.)

Thus among the wools specified in paragraph 361 of the 1909 Act are "Down clothing wools," and among the combing wools specified in paragraph 362 of that act are "Down combing wools."

In the case of the Down wools these same terms have been used to distinguish the two classes in every tariff act since the Act of 1867, excepting the free wool acts of 1894 and 1913.

The pertinent wool provisions of the successive tariff acts are set forth in the opinion in suit 2245 (R., 422-425).

It will thus be seen that for over fifty years in five tariff acts Congress used the terms "clothing wool" and "combing wool" to designate separate and distinct classes of wool.

The entire legislative history of the use of these terms is clearly opposed to petitioner's contention that the term "clothing wool" as used in the present enactment was intended to designate wool for use in the manufacture of clothing.

If it has been the purpose of Congress to designate wool used in the manufacture of wearing apparel, it is obvious that the term "clothing wool" would have been the last term adopted for that purpose, knowing as it must be presumed Congress did know, its legislative history and the fact that this particular term was in general common use among those to whom the law was directed, and who would necessarily have to conduct their business under this law, as well as in all dictionaries and other authorities in an entirely different sense.

When the Emergency Act was in the Senate, Senator Lodge introduced the following amendment:

> "Paragraph 18, page 3, line 16, strike out the words 'wool commonly known as clothing wool,' and in place thereof insert the words 'all wool.'"
>
> (See *Congressional Record* of February 1, 1921, ~~at page 2198~~. Vol. 60 part 3 page 2378.)

The proposed amendment was not acted upon and therefore may not serve as evidence of any intent of Congress. It clearly shows, however, the phraseology that would have been necessary to accomplish the purpose that petitioner claims for a differently worded provision. Congress did not demand a duty on all wool excepting carpet wool. It specifically limited the duty to "clothing wool."

III.

In reaching its conclusions, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right.

The plain facts of the case are these: The Emergency Act in clear language requires a duty on clothing wool. The wool at bar is combing wool. Clothing wool and combing wool are separate, distinct and different classes of wool. That the present wool is in fact combing wool does not seem to be anywhere disputed, nor indeed could it be, because that fact was well established by the practically unanimous testimony of all the witnesses including those called by the Government.

The Court of Customs Appeals accepted the normal, ordinary meaning of the term "clothing wool" as defined in the dictionaries, encyclopedias and publications of the Federal Government, including the Tariff Commission and the Department of Agriculture. The court gave due consideration to the use of the term in prior tariff acts and to the use and understanding of the term by witnesses from various branches of the wool industry.

All of the above sources of information unite in one common use and definition of the term "clothing wool," and in view of this universally accepted understanding and meaning for the term, the court held that its meaning was not ambiguous.

The mere fact that the term is widely used, discussed and defined in official publications of the Federal Government, would in itself leave no doubt as to what Congress understood to be the scope and meaning of the term.

In the latter connection it might be noted that as late as May 26, 1924, the Treasury Department in a regulation requires importers of wool to classify clothing wool and combing wool separately on their customs entries, T. D. 40217 (45 Treas. Dec., 670).

In United States *v.* Buffalo Natural Gas Fuel Co., 78 Fed., 110, the Circuit Court of Appeals, in the Second Circuit, had before it a customs case brought there under the then existing procedure from the Board of General Appraisers. The question before it involved the meaning of the term "minerals" as used in a tariff provision, the specific question being whether it included "natural gas." It was there found that natural gas was listed as a mineral in the "Statistical Abstract of the United States" prepared under the direction of the Secretary of the Treasury and containing statistics of finance, coinage, commerce, etc. In its opinion, the court, speaking through Judge Lacombe, said, at page 112:

> "If the question whether the word 'mineral' in ordinary speech would include such an article as natural gas, were to be settled solely from reference to the dictionaries, its solution might not be easy. In view, however, of the various official publications by the Federal Government set forth in the record, and which are not intended for scholars or scientific men, but

> to give to Congress and to the people the best knowledge the compilers can, there can be little doubt as to what Congress understood to be the scope and meaning of the words,—a scope and meaning which is within some, at least, of the definitions of the lexicographers."

The decision in the above case was affirmed in United States *v.* Buffalo Natural Gas Fuel Co., 172 U. S., 339.

In Merck *vs.* United States, 6 Ct. Cust. Appls., 32, 34, 35, official bulletins pubished by the Department of Agriculture were accepted as determinative of the meaning of the term "sheep dip."

Petitioner urges that the court should not have given consideration to the testimony of commercial witnesses as to the meaning and use of the term "clothing wool." The contention, however, is obviously without merit. In the first place, the court did not base its conclusion as to the meaning of the term solely upon the testimony of commercial witnesses. That was merely one of the considerations. As we have already pointed out, the court gave full consideration to the definitions in the dictionaries, encyclopedias, publications of the Federal Government, and to the use of the term in prior tariff acts. Obviously the commercial understanding could not be excluded without excluding the only meaning in which the term is ever understood or used. The union of these various sources in a common definition simply established what already existed as a presumption. Thus in Swan *vs.* Arthur, 103 U. S., 597, this Court said:

> "While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown."

Furthermore, there was ample authority for the Court to give due and proper consideration to the testimony of the commercial witnesses as to the use and understanding of the term. Raw wool because of its very nature exists only as an article of commerce. Laws imposing duties upon imported merchandise are intended for practical use and application by men engaged in commerce and presumably are drafted in language understood by those to whom they are necessarily directed. This was early recognized by this Court *In Re* Two Hundred Chests of Tea, 9 Wheat., 438, wherein Mr. Justice Storey, speaking for the Court said, at page 438 of the opinion:

> "The object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade."

In Elliott *v.* Swartwout, 35 U. S. (10 Pet.), 137, 151, this Court, speaking through Mr. Justice Thompson, said:

> "Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence

> it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denominations of articles, according to the commercial understanding of the terms used."

In Hedden *v.* Richards, 149 U. S., 346, 349, this Court, speaking through Mr. Justice Shiras, said, in regard to a tariff provision:

> "The words are to be taken in the sense in which they will be naturally understood by those to whom they are addressed."

The above rules have been universally followed in the interpretation of tariff provisions. In fact, they were followed by the Court of Customs Appeals in an earlier case involving the same provision of the Emergency Tariff Act as is involved in the present case, namely, "wool, commonly known as clothing wool." United States *v.* Davies, 11 Ct. Cust. Appls., 392, 395. In the latter case, the Government accepted the decision and a large number of claims were settled thereunder by stipulation.

As was clearly pointed out by the Court of Customs Appeals in its opinion in suit 2245 (R., 419), none of the words of the present provisions—"wool, commonly known as clothing wool"—is new to tariff legislation. The identical phrase "commonly known as" has been used in connection with other merchandise in prior tariff acts. Thus in Tiffany *v.* United States, 131 Fed., 398, the court was called upon to determine the char-

See also { American Net & Twine Co. v. Worthington, 141 US 468,471
Goat&Sheepskin Co. v. U.S., 206 US. 194,203

acter of articles coming within the provisions for "articles commonly known as jewelry." Its conclusion was based upon the testimony of witnesses from various branches of the trade. The decision in Tiffany *v.* United States, *supra*, was acquiesced in by the Treasury Department in Treasury Decision 25316 (7 Treas. Dec., 840). In the opinion in suit 2245 (R., 419) Judge Bland also called attention to the fact that the synonymous phrase "usually known" has appeared in five prior tariff acts in connection with the commercial names of various classes of wool, such as Leicester, Cotswold, Lincolnshire Down Combing Wools, Canada Long Wools, etc., and that "no court or administrative official has held that the phrase 'usually known' changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade."

In Cooper *v.* Dobson, 157 U. S., 148, this Court had under consideration an importation of short goat hair that had been classified for duty under Schedule K of the Tariff Act of 1883 in the following provision (22 Stat., 488, 508):

> "Class two, combing wools.—That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat, and other like animals."

The importers contended that the goat hair in the importation was too short to be suitable for combing,

and asked this Court to construe the above provision "as meaning that class two should consist wholly of articles that coud be used for combing purposes, that is, as well hair of the goat as wools that were susceptible of treatment by combing," thus excluding the hair in question.

In declining to construe the provision in the manner requested, this Court, speaking through Mr. Justice Shiras, said, at page 153:

> "Adopting the reasoning and the language of the opinion of the Circuit Court of Appeals above referred to, we hold that, upon the face of the Act of 1883, and according to the clear and unambiguous meaning of its words, no wools, indeed, are included in class 2, except combing wools or wools fit for combing; but that there is no such restriction with regard to hair * * * ."

The opinion of the Circuit Court of Appeals referred to was United States *v.* Hopewell, 51 Fed., 798 (5 U. S. App. 137).

If the phrase "usually known," as used in the above provision, does not make the meaning of the term "combing wool" ambiguous, there is no reason why the synonymous phrase "commonly known" should make the term "clothing wool" ambiguous in the present enactment.

Long staple wool is usually or commonly known as combing wool. Short staple wool is usually or commonly known as clothing wool.

While the origin of the respective classes has changed during the past fifty years and cross breeding has somewhat changed the blood distinctions, yet the fundamental difference between the two classes—clothing wool and combing wool—is the same today that it has always been—clothing wools are and always have been the short wools used in the woolen industry: combing wools are and always have been the long wools used in the worsted industry.

Having found that the terms of the act were unambiguous and that the term "clothing wool," when given its normal and generally accepted meaning, did not include combing wool, the Court of Customs Appeals declined to enlarge the taxing provision so as to include a class of wool not included within the clear meaning of its terms.

In the foregoing we have discussed the reasoning and conclusions of the Court of Customs Appeals in suit 2245.

When these precise questions came up again to the Court of Customs Appeals in the present suit, Judge Bland, again speaking for the court, said, in the opinion below (R., 403):

> "When we read the testimony of additional witnesses and consult additional authorities, it becomes more apparent that the common meaning of the words 'clothing wool' is that it is a short-fibered wool."

Respondents respectfully submit that the conclusions of the Court of Customs Appeals were based

upon sound and well-established principles and should be affirmed.

IV.

The statute in clear unambiguous terms limits the duty to "clothing wool." Its terms cannot be enlarged by construction so as to include the wool at bar which belongs to a separate and contrasted class of wool known as combing wool.

The omission of combing wool from the purview of the emergency act does not run counter to the general system of the emergency legislation. The Emergency Act did not repeal the Act of 1913. It was not intended to be a general revision of the tariff. It simply named certain classes of goods for the emergency duties leaving the 1913 Act in full effect as to the commodities not so named.

In the Cotton Schedule the Emergency Act in paragraph 16 (C. 14, 42 Stat., 7), directs an emergency duty on "cotton having a staple of one and three-eighths inches or more in length." The short staple cotton was not mentioned in the Emergency Act and so remained free under the general provision for "cotton" in paragraph 467 of the free list of the 1913 Act.

In the case of wool, combing wool was not the only class of wool omitted from the emergency duty. Wool imported on the skin was not specifically named in the Emergency Act. In United States *v.* Davies, 11 Ct. Appeals, 392, the question arose as to whether wool on the skin should be included in the present provision

for "wool, commonly known as clothing wool." It was conceded that the wool was suitable for use in the manufacture of clothing. The court held that wool on the skin had always been regarded commercially and legislatively as separate from clipped wool and therefore did not come within the emergency provision for "wool, commonly known as clothing wool." That decision was accepted by the Treasury Department.

Petitioner seeks to have the taxing provision enlarged by construction so as to include "combing wool," in order to meet a supposed policy of Congress which petitioner alleges is revealed in the history of the times, committee reports, and in remarks made by individual members of Congress in committee hearings and in debates on the floor of the House and Senate.

At page 17 of his brief on petition, petitioner insists that the above sources of information indicate the congressional intent to protect "the large body of domestic wool producers" and that the exemption of "combing wool" from the tax as claimed by the importers would defeat the purposes of the legislature, "as it would result in leaving the large body of domestic producers of wool of the combing grade unprotected, and at the same time protecting the small class of those producing wool of the clothing grade."

Neither the record nor any other source of information supports the contention that only a small class of domestic growers produce wool of the clothing grade. But however that may be, the petitioner's assertions merely admit the distinctions between the two classes

of wool and emphasize the fact that the statute as written does not include "combing wool."

Nowhere in the brief does the petitioner stand squarely upon the proposition that the words of the act are ambiguous, yet under the clear rule of decision, that is a necessary condition precedent to a search for intent outside of the law.

Even where the terms of an act are obscure or ambiguous, this Court has never authorized an indiscriminate search for intent through the journals of the legislature, such as petitioner resorts to in his brief and the appendix thereto. Most of the references are to remarks made by individual members of Congress in debates or during committee hearings. In one of the very cases relied upon by the petitioner (brief, p. 20), namely, Duplex Printing Press Co. *v.* Deering, 254 U. S., 443, 474, this Court, speaking through Mr. Justice Pitney, said:

> "By repeated decisions of this Court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body."

In Pennsylvania R. R. Co. *v.* International Coal Mining Co., 230 U. S., 184, 199, it was said, in regard to reports of committees:

> "While they may be looked at to explain doubtful expressions, not even formal reports—much less the language of a member of

> a committee—can be resorted to for the purpose of construing a statute contrary to its plain terms, or to make identical that which is radically different."

There is nothing referred to in petitioner's brief to indicate that there was any legislative intention to include "combing wool" in the assessment, nor is there anything to indicate that Congress did not believe that an assessment on clothing wool, only, would properly meet the existing emergency and supply the necessary protection to the wool-growing industry, or at least as much protection as the majority deemed it wise to ask for in a bill that met with extreme opposition in an almost equally divided Congress. See Lincoln *v.* United States, 202 U. S., 484, 498.

While the respondent has no reason to feel alarmed at the prospect of an inspection of any of the data referred to by the petitioner, yet, the data in question is clearly immaterial.

Petitioner seems to have adopted the view that the court, rather than Congress, is the final arbiter of the character of legislation necessary to meet the emergency existing at the time the law was passed.

Proceeding upon that theory the petitioner has set forth in his brief a description of the financial and industrial emergency existing at the time the law was enacted, apparently with the view that the court should study the emergency for the purpose of determining whether or not the law adequately met that emergency. He seems to be of the further view that the court should compare the measure of protection

given to producers of clothing wool and the measure of protection given to the producers of combing wool, and if it should be found, as petitioner alleges at page 17 of his brief, that an assessment of duty on clothing wool only would not properly meet the emergency and would leave the producers of combing wool without protection, that the Court should enlarge the provision so as to include combing wool in the enactment, although the inclusion of combing wool may not be consistent with the strict letter of the statute.

In other words, the petitioner in effect contends that the language of the law, although clear, must give way to a construction that the Court might regard as better serving the reasons that induced its enactment.

The rule, however, as established by this Court is the other way around. It must be presumed that the assessment of duty on clothing wood met the emergency just as Congress intended that it should be met and provided the protection that Congress intended should be provided, and that an assessment of duty on "combing wool" was not deemed necessary or expedient in order to accomplish the purpose.

The rule was clearly stated in McKenzie *v.* Hare, 239 U. S., 299, 308, where Mr. Justice McKenna, speaking for this Court, said, at page 308 of the opinion:

> "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language, or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and

> expressed by its words, and it makes no difference that in discussion some may have given more prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

Furthermore the alleged discrimination against the growers of combing wool would not justify the interpolation of the term "combing wool" into the provision by the Court.

In Chung Fook *v.* White, 264 U. S., 443, this Court had before it a case involving an exceptional instance of discrimination. Section 22 of the Immigration Act of February 5, 1917 (Chapter 29, 39 Stat., 891), made an exception to the general prohibition against the entrance into the United States of aliens afflicted with dangerous diseases. The exception was in the case of the alien wife or child of a naturalized citizen, who might be admitted for hospital treatment. The provision, however, failed to mention native born citizens, so that according to its terms there was a definite discrimination against a native born citizen in favor of a naturalized citizen. This Court was asked to construe the law so as to include native born citizens. Speaking through Mr. Justice Sutherland, this Court took the view that it could not interpolate the words "native born citizen" without usurping the legislative function, and on page 446 of the opinion, it was said:

> "The words of the statute being clear, if it unjustly discriminates against the native born citizen, or is cruel and inhuman in its results,

> as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it is written, unless clearly unconstitutional."

As was pointed out by Judge Bland in the opinion below (R., 405) the Court is not permitted "to speculate as to why Congress, as a whole or as individuals, would wish to include or exclude one of the well-known grades of wool from the protective tariff provision."

As was stated by this Court through Mr. Justice Hughes in a customs case, United States *v.* Citroen, 223 U. S., 407, 415:

> "We are not concerned with the reason for the distinction; it is enough that Congress made it."

In an early customs case decided by this Court in Pennington *v.* Coxe, 2 Cranch, 33, 59, Mr. Chief Justice Marshall, speaking for the Court, said:

> "Those political motives which induced the legislature to select objects of revenue, and to tax them under particular circumstances, are not for judicial consideration."

In view of the fact that the law as enacted clearly omits combing wool from the taxing provision it is useless for petitioner to attempt to show that it was the policy of the Government to include it.

In United States *v.* First National Bank, 234 U. S., 245, it was said, at page 260 of the opinion:

> "But the policy of the Government in passing legislation is often an uncertain thing, as

to which varying opinions may be formed, and may, as is the fact in this case, afford an unstable ground of statutory interpretation." Citing Hedden *v.* The Collector, 5 Wall., 107, 111.

Even if it could be shown that there was no good reason why combing wool should have been omitted from the statute, that would not constitute a reason for its being interpolated by the Court. In Bates Refrigerating Co. *v.* Sultzberger, 157 U. S., 1, 37, it was said:

> "It is not for the Court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

The rule against enlarging the subject-matter of a statute by judicial interpretation has been applied with even greater particularity in the case of statutes levying taxes including customs duties.

In Eidman *v.* Martinez, 184 U. S., 578, 583, this Court, speaking through Mr. Justice Brown, said:

> "We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language."

The same rule was again stated in Gould *v.* Gould, 245 U. S., 151, 153, wherein Mr. Justice McReynolds, speaking for the court, said:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the Government, and in favor of the citizen. United States *v.* Wigglesworth, 2 Story, 369; American Net & Twine Co. *v.* Worthington, 141 U. S., 468, 474; Benziger *v.* United States, 192 U. S., 38, 55."

The rule was again repeated in United States *v.* Merriam, 263 U. S., 179, 187, 188, wherein Eidman *v.* Martinez, *supra*, was cited with approval. Mr. Justice Sutherland, speaking for the court, referred to a still earlier recital of the rule by Lord Cairns in Partington *v.* Attorney General, L. R. 4; H. L., 100, 122, from which we quote the following:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

It will thus be seen that even if the present question were one of doubt, the doubt would be resolved in favor of the importer.

In American Net & Twine Co. *v.* Worthington, 141 U. S., 468, this Court had under consideration the

tariff classification of certain "gilling twine." Mr. Justice Brown, speaking for the court, said at page 475 of the opinion:

> "We think the intention of Congress that these goods should be classified as "gilling twine" is plain; but were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language."

The same view has been taken by this Court in other customs cases.

Hartranft *v.* Weigmann, 121 U. S., 609, 616.
Benziger *v.* United States, 192 U. S., 38, 55.

V.

The doctrine of res judicata has a clear application to the case at bar.

In petitioner's fifth point, at page 28 of his brief, he undertakes to reply to respondents' motion to dismiss or affirm. He says:

> "It is a universal rule long established in Customs procedure that each and every importation may become the subject of an independent action, and the rights of the parties in each instance become the subject of independent consideration and judgment by the courts."

We readily concede that the prior suit, No. 2245, and the present suit are separate and distinct actions.

Under the well-established rule of decision, however, the judgment in the first action is conclusive as to every question decided there and which is raised again in the second action between the same parties. It is unnecessary to cite authorities, as they are fully set forth in our brief filed in support of our motion.

Conclusion.

The judgment of the United States Court of Customs Appeals should be affirmed.

Respectfully submitted,

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